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CENTRAL FAX CENTERPatent Application
U.S. Application No.: 10/022,438
Attorney Docket No.: 52493.000230**APR 09 2008**REMARKS

The Office Action dated November 9, 2007, has been reviewed and carefully considered. By this Amendment, claims 1-6, 9-17, 20-26 are pending, and claim 25 is amended to further clarify the claimed invention. No new matter has been entered by this Amendment. Support for the amendments to claim 25 may be found on pages 9 and 22, of the application, for example.

Reconsideration of the outstanding rejections in the present application is respectfully requested based on the following remarks.

THE EXAMINER INTERVIEW

Applicant thanks Examiner Van Doren for meeting with Applicant's representative, James Miner, in the Interview of March 4, 2008 to discuss this application, as well as the further communications on or about March 7, 2008. Applicant confirms the content of such as set forth in the Interview Summary mailed on March 19, 2008. During the interview, Examiner Van Doren provided thoughtful insight into her interpretations of the claim language vis-à-vis the applied art. Applicant has amended some of the claims in light of the comments and for clarity.

Applicant, however, notes that these amendments should not be construed to be an admission of agreement with the propriety of the previous rejection, and reserves the right to pursue the claim language originally as filed in this or continuing applications.

I. THE INDICATION OF ALLOWABLE SUBJECT MATTER

In the Office Action, the Examiner has maintained the objection to claim 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the indication of allowable subject matter in the Office Action. In view of the

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arguments set forth below regarding claim 1, from which claim 21 depends, such claim 21 has not at this time been placed into independent form.

II. THE 35 U.S.C. §102 REJECTION BASED ON BARTON

In the Office Action, claims 1-6, 9-17, 20, 22 and 25-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Barton et al. (U.S. 2002/0059093), hereinafter "Barton."

This rejection is respectfully traversed for the reasons set forth in the August 23, 2007 Response, as well as the reasons set forth below.

In response to Applicant's prior arguments, on page 9, the Office Action asserts:

In response to argument (1), Examiner respectfully disagrees. The claim recites, "determining an occurrence index based on the potential consequence of noncompliance", and thus the claim does not recite a specific manner in which the index is determined, but merely that it is based (i.e. being founded or established) on the potential consequences (or potential effect, result, or outcome) of noncompliance. Therefore, the recitation of "potential consequences of noncompliance" requires that the determined index considers the fact that consequences of non-compliance occur. Examiner further points out that in the broadest reasonable interpretation of the claim, the term "determining" would mean deciding on, discovering, or finding out. The claim does not require the use of a specific algorithm or method within the scope of the claim language. Thus, the language "determining an occurrence index" merely requires setting a value in the system that reflects the value of the index based on received answers to questions.

The Office Action goes on to assert on page 10, line 7, that "... Therefore, the Occurrence Index is the value created using the rating system, which is based on the possibility of failure as a potential consequence of noncompliance."

Applicant submits that the basis of the rejection is so attenuated so to leave the particulars of the claimed features meaningless. Indeed, Applicant respectfully submits that the logic set forth in the Office Action appears to reflect an "everything is based on everything" type reasoning.

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In contrast to the teachings of Barton, claim 1 recites a particular relationship between the claimed features. Claim 1 recites, for example:

determining a detection index based on the number of responses, and
corresponding answers, to each of the series of questions;

determining an occurrence index based on the potential consequence of non-compliance;

Accordingly, Applicant submits that such claim language requires some relationship between (1) the determination of the detection index vis-à-vis the number of responses, and corresponding answers, to each of the series of questions; and (2) the determination of the occurrence index vis-à-vis the potential consequence of non-compliance. Thus, any art relied upon to teach such features should at least disclose such respective associations as claimed.

Applicant submits that Barton does not, as such is evidenced in the Office Action. That is, as noted above, the Office Action sets forth that the Occurrence Index is the value created using the rating system, which is based on the possibility of failure as a potential consequence of noncompliance. Such is simply too attenuated to fairly reject such claimed features under 35 U.S.C. 102 (especially in conjunction with the claimed features relating to the detection index).

Relatedly, the Office Action asserts that "the claim does not recite a specific manner in which the index is determined, but merely that it is based (i.e. being founded or established) on the potential consequences (or potential effect, result, or outcome) of noncompliance."

Applicant of course acknowledges the "based on" language of claim 1. However, Applicant submits that Barton, in order to teach the claimed invention, must provide more association than simply that the "occurrence index is the value created using the rating system, which is based on the possibility of failure as a potential consequence of noncompliance."

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Indeed, as set forth in the prior Response, the occurrence index recited in claim 1 relates to the "potential consequence of non-compliance" whereas in Barton "an occurrence factor measures the likelihood of occurrence of non-compliance. The likelihood of occurrence measures the frequency of non-compliance in the process..." (see Barton paragraph 0084). Thus, the Barton "occurrence factor" does not address the consequences but rather the likelihood of an occurrence. To bridge this gap the Office Action equates an "occurrence" in Barton to a "potential failure" in Barton (Office Action cites Barton paragraphs 0007, 0081, and 0084). Such an analogy as set forth in the Office Action is not supportable by the disclosure of Barton. The office action therefore incorrectly convolutes the "occurrence factor" in Barton with the "Potential Failure Effects" as defined in Barton paragraph 0084 and FIG. 16. Even if the "occurrence factor" in Barton was synonymous with "potential failure" in Barton (which is not admitted), Barton still does not teach the occurrence index of claim 1. In particular, the Office Action compares the "potential consequences" of claim 1 to the "causes and effects of failure. See at least paragraphs 0007, 0038, and 0042." The occurrence index of claim 1 pertains to how "non-compliance" has associated "consequences." In contrast, Barton teaches that when a "Process Step/Input" fails it may lead to "Potential Failure Effects" (see Barton paragraph 0084 and FIG. 16). Thus, the "consequences" of claim 1 and the "effects" of Barton arise from different sources: the "consequence" in claim 1 arises from "non-compliance" whereas the "effect" in Barton results from the failure of a business "Process Step/Input." (see Barton 0084 and FIG. 16).

As was also asserted in Applicant's August 23, 2007 Response, Applicant submits that Barton fails to teach the "detection index based on the number of responses to each of the series

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of questions” as recited in claim 1. Barton refers to a “detection rating” (see Barton claims 24, 54, 98 and 109), “detection ability” (see Barton claim 75 and paragraph 0081), “detection factor” (see Barton claims 5, 50, 55 and paragraph 0084), “detection” (see Barton paragraph 0084) and “ability to detect” (see Barton paragraph 0084). Barton derives these detection concepts “based on a standard rating system which is part of the knowledge base” (see Barton paragraph 0081). Thus, Barton’s “detection” is defined by the knowledge base server whereas the “detection index” as recited in Applicant’s claim 1 is based on the number of responses and corresponding answers to each of the series of questions.” Thus, the Barton disclosure does not support a conclusion that the Barton’s “detection” is based on such, so as to teach the claimed invention, i.e., the requisite association so as to teach such features of claim 1 is not present in Barton.

Applicant submits that the assertions set forth in the Office Action regarding Barton’s alleged teaching of the claimed “detection index” is deficient based on further reasons. In short, it appears that the Office Action asserts that (1) the Barton system takes a survey using the same server as is used for the knowledge base (2) the detection factor in Barton is extracted from the knowledge base, and concludes that the Barton detection factor is based on the survey answers. Such reasoning and assertion requires the inference that the survey answers are used in the determination of the detection factor. Such is simply not taught by Barton. That is, Barton simply does not teach the claimed association relating to the detection index vis-à-vis the number of responses, and corresponding answers, to each of the series of questions,, as recited in claim 1.

Applicant submits that independent claims 10 and 25 are allowable at least for some of the reasons set forth above with regard to claim 1. Further, the dependent claims are allowable

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based on their various dependencies on the independent claims, as well as for the various additional features such dependent claims recite.

Thus, Barton fails to teach or suggest the claimed features. Withdrawal of the 35 U.S.C. §102 rejection is respectfully requested.

III. THE 35 U.S.C. §103 REJECTION BASED ON BARTON

In the Office Action, claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton. This rejection is respectfully traversed.

The Office Action proposes to modify the features of Barton. Specifically, the Office Action asserts:

As per claims 23 and 24, Barton et al. teaches the potential consequence of non-compliance (See paragraphs 0081 and 0084-6). However, Barton et al. does not expressly disclose that the potential consequence of non-compliance is based on the total number of agents or employees affected by non-compliance or the total number of policies in force.

The Office Action then proposes to modify Barton to address such deficiencies.

Applicant submits that even if it were obvious to so modify Barton (which it is not admitted) such would fail to cure the deficiencies set forth above with respect to the independent claims.

Accordingly, Applicant submits that claims 23 and 24 are allowable based on their dependency on claim 1, as well as for the further features claims 23 and 24 recite. Withdrawal of the rejection under 35 U.S.C. §103 is requested.

IV. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, at least for the reasons set forth above, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues

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and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

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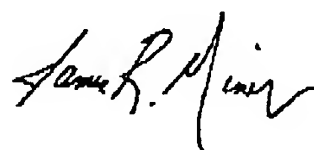
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To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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